

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DUSTIN S. SOULEK, individually and as representative of
a Class of Participants and Beneficiaries on Behalf of the
Costco 401(k) Retirement Plan,

Plaintiff,

v.

Case No. 20-C-937

COSTCO WHOLESALE CORPORATION, et al.,

Defendants.

ORDER STAYING CASE

Plaintiff Dustin Soulek, a participant in the Costco 401(k) Retirement Plan (the Plan), brings this case as a proposed class action under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(2), against Defendants Costco Wholesale Corporation, the Board of Directors of the Costco Wholesale Corporation, Costco Benefits Committee, and John Does 1–30. Pending before this Court is Defendants’ Rule 12(b)(6) motion to dismiss for failure to state a claim. After the parties filed their briefs, the United States Supreme Court granted certiorari in *Divane v. Northwestern University*, 935 F.3d 980 (7th Cir. 2020), *sub nom. Hughes v. Northwestern University*, No. 19-1401, 2021 WL 2742780 (S. Ct. July 2, 2021), a case upon which Defendants’ motion to dismiss is largely based. The case is set for argument on December 6, 2021.

Divane/Hughes represents a split in the circuits. Because the Supreme Court’s decision will likely clarify the pleading requirements for ERISA breach of fiduciary claims in cases such as this, the Court concludes that in the interest of judicial economy the case should be stayed pending the Supreme Court’s decision. Awaiting clarification by the Supreme Court will not only save judicial resources but will also likely preserve the parties’ resources by allowing them to avoid unnecessary discovery or appeal, depending on the Supreme Court’s decision. A stay in this

case therefore appears appropriate. Accordingly, the Court, *sua sponte*, **STAYS** this case until further order of the Court. The Clerk is directed to administratively close the case.

SO ORDERED at Green Bay, Wisconsin this 30th day of September, 2021.

s/ William C. Griesbach
William C. Griesbach
United States District Judge
